IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2134 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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JMC SECURITIES PVT LTD

Versus

VADODARA STOCK EXCHANGE LTD

Appearance:

MR MIHIR H JOSHI for the Petitioners.

MR ASHOK L SHAH for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:26 /09/2001

CAV JUDGEMENT

This petition has been filed for a declaration that the action of the respondent of demanding and retaining the security deposit amount of Rs. 10 lacs from the petitioner for converting individual membership into corporate membership is

arbitrary, discriminatory and without authority of law and for a direction to refund the amount of Rs. 10 lacs collected from the petitioner and retained by the respondent as security deposit with interest at the rate of 18% per annum from the date of such deposit till payment and for quashing the decision of the respondent communicated by the letter dated 19.12.2000.

2. The petitioner no. 2 was a member of the respondent since 1990 and was a leading broker of the respondent Exchange whose volume accounted for more than 50% of the total turnover of the exchange. After liberalisation in June, 1991 for parity with the international accepted norms, the Government announced several incentives to corporate membership in the stock exchange. The petitioner firm sought for conversion and made an application for this purpose in October, 1995. At that time, there were no regulations or guidelines regarding payment of security deposit in such cases and they were not clarified by Security and Exchange Board of India. (for short "SEBI"). According to the proposed regulations of the respondent for covnerting individual membership into corporate membership, contemplated a deposit of Rs. 10 lacs as cash security from such individual members as at the relevant time, there were no regulations framed or approved by SEBI. Therefore, the respondent demanded a provisional deposit of Rs. 10 lacs for processing of the application of the petitioner firm for conversion of individual membership into a corporate membership. The petitioner indicated its willingness to deposit the amount of Rs. 10 lacs as demanded by the respondent by a letter dated 10th October,1995 subject to the finalisation of the issue by SEBI. The respondent by its letter dated 22nd November, 1995 approved readiness and willingness of the petitioner firm and it was forwarded for the approval of the SEBI. The respondent also requested for clarification and guidelines for conversion of the individual membership into corporate membrship from SEBI. The respondent informed the petitioner by a letter dated 24.11.1995 stating that the approval of the respondent for the conversion of the petitioner's individual membership into corporate membership which has been forwarded to SEBI was subject to the deposit of Rs. 10 lacs and subject to the terms and conditions to be decided by SEBI in this connection. Accordingly, the petitioner firm deposited Rs.10 lacs as interest-free deposit vide its letter dated 13.12.1995. The petitioner made it clear that the deposit should be kept with the respondent till the norms for conversion of individual membership into corporate membership are finalised and conveyed by SEBI. If such amount is found

excess, as per the terms to be imposed by SEBI, should be refunded. The proposal of the respondent for the conversion into corporate membership was accepted by SEBI and the individual membership was converted into corporate membership of the petitioner firm, but no norms or guidelines were finalised by the SEBI for this conversion. Thereafter, in the months of December, 1997 and January, 1998 the respondent converted about 35 individual membership into corporate membership without insisting for interest-free deposit of Rs. 10 lacs. The SEBI has also approved the conversion of 35 individual membership into corporate membership. The petitioner firm asked the respondent that SEB I has approved the conversion from individual membership into corporate membership without any condition of deposit of Rs. 10 lacs. Hence, the petitioner's amount should be refunded. The petitioner firm time and again reminded the respondent for the return of the amount deposited by it, but the respondent did not respond. The petitioner sent a letter dated 16.10.2001 to the respondent for this purpose. The respondent by its letter dated 27th October, 2000 replied that the matter was pending for consideration of the Governing Board of Exchange. When the petitioner did not receive any result, they sent a legal notice to the respondent on 6.11.2000 requiring the respondent to return the amount of deposit of Rs.10 lacs together with interest as SEBI had not sanctioned such retention. Thereafter, the petitioner received a letter from the respondent on 19.12.2000 wherein it is stated that the deposit of the petitioner is not refundable till the petitioner continued to be the member of the exchange. Thus, according to the petitioners, the retention of the petitioner's deposit under by-law 19 is completely misconceived and the action is discriminatory and the retention of the amount of the petitioner is without authority of law and there is no provision for collection and retention of such amount under Article of Association, Rules and Regulations or by-laws of the respondent Stock Exchange. It is stated that some of the defaulters have been permitted for conversion into corporate membership from individual membership and no condition for deposit of Rs.10 lacs has been imposed so far. There is no justification of retention of such amount of security deposit anyhow. The decision of the respondent by letter dated 19th December, 2000 is wholly arbitrary, contrary to the rules and by-laws of the respondent Exchange.

3. Affidavit-in-reply has been filed by the respondent Exchange stating therein that the respondent is not the State within the meaning of Article 12 of the

Constitution and no writ petition under Article 226 or other Articles of the Constitution lies against the respondent Exchange. It is admitted by the respondent in its affidavit-in-reply that it is true that the petitioner no.2 firm made an applciation for corporatising its membership in about October, 1995. As the respondent Exchange was established in 1990, at the relevant time, individual membership was admitted. For the first time in 1994-95, the respondent decided to admit corporate membership. Right from the year 1990, individual members were required to pay security deposit of Rs.2 lacs. In the year 1994-95, the respondent Exchange decided to invite corporate membership and take security deposit of Rs.10 lacs for direct corporate membership. As regards individial membership to be converted into corporate membership, the respondent Exchange took security deposit of Rs.10 lacs in parity with direct corporate membership. It was suggested by the respondent Exchange for converting individual membership into corporate membership, security deposit of Rs. 5 lacs may be taken in place of security deposit of Rs.10 lacs. Considering the objections to be raised by the SEBI, the respondent decided that even corporate membership converted from individual membership, the parties are required to furnish security deposit of Rs.10 lacs. The suggestion of the respondent was to collect only Rs. 5 lacs by way of security deposit for individual membership being converted into corporate membership as against Rs.10 lacs to be collected as security deposit from direct corporate membership was sent to SEBI for its approval. Till the approval by SEBI it was decided by the respondent that for the conversion of the individual membership converted into corporate membership, security deposit of Rs.10 lacs should be collected and if and when SEBI approves the respondent's suggestion to collect only Rs. 5 lacs by way of security deposit for the conversion of corporate membership from individual membership, the respondent Exchange would refund the additional amount of Rs. 5 lacs. It is mentioned in the letter dated 10.10.1995 that "Since VSE is awaiting clearance from SEBI whether the standard of security corporate card and converted card is at parity or not, to facilitate early processing of documents relating to conversion we are ready to deposit of Rs.10 lacs as cash security with VSE in parity with corporate card till the SEBI clears the matter." The respondent stated that since corporate membership has already been registered with SEBI and that registration as corporate membership with permanent deposit of Rs. 10 lacs has been forwarded to SEBI. As and when the guidelines for convrsion of individual membership to corporate

memebrship are cleared by SEBI, additional amount of Rs. 5 lacs will be refunded. In case SEBI considers to remove this discrepancy between two membership status and suggests the collection of Rs.10 lacs as permanent deposit, then the same will be withheld and the respondent requested the case of the petitioner to be approved on the lines of other cases approved by the SEBI. The petitioner firm paid up the interest free security deposit with a clear statement that the deposit shall be kept with the respondent till final norms for conversion of individial memebrship into corporate membership are finalised and conveyed by SEBI and that final decision of SEBI will be binding and if any excess amount is found the same will be refunded to the petitioner. It is also admitted that conversion of 35 individual membership into corporate membership during the period from April, 1997 to 31st December, 1997 was without insisting for interest free deposit of Rs. 10 lacs, but the case of the petitioner is totally different from the case of 35 individual membership which was converted into corporate membership during the said period. The petitioner firm obtained individual membership of the respondent on 6.12.1990 and that petitioner firm applied for conversion of its individual membership into corporate membership during the year 1995 under the policy of the exchange which was in existence at the relevant time and under the decision of the respondent the amount of Rs.10 lacs for the conversion of the membership was collected subject to the approval of the suggestion made by the Stock Exchange to collect only Rs 5 lacs. The individual membership of the petitioner firm was converted into corporate membership with effect from 12.8.1996 and since then the petitioner is acting as a corporate member enjoying all privileges of the member of the respondent Stock Exchange. In the budget of the year 1997 with a view to encourage corporate memebrship, the Central Government exempted from the capital gain tax in the gain or profit arising of individual membership of Stock Exchange being converted into corporate membership. The exemption from the capital gain tax was initially limited for those individual members who got themselves converted into corporate membership from the date of the Budget of 1997 to 31st December, 1997 and that period was subsequently extended upto 31st March, 1998. Following the policy of encouraging corporatarisation of membership of the respondent Exchange, even the SEBI waived its registration fees of Rs. 5000 for those who obtained corporate membership during that period. Accordingly, the management of the respondent decided that those individual members who converted themselves into corporate membership during the period from April 1997 to

31st December, 1998 would not be required to pay security deposit on the basis of the corporate membership. The general body of the respondent in its meeting held on 27th September, 1997 passed a special resolution to the effect that individual members applying for converting themselves into corporate membershi from 31st December, 1997 till such extended time as may be prescribed by the Government of India would be required to pay security deposit only on the basis as it is charged to an individual member. The conversion of 35 members was pursuant to the resolution passed at the annual general meeting of the respondent after 27th September, 1997 and before 31st December, 1997. There is one another company M/s. Jogindar Capital Services Ltd. who also became corporate member of the respondent in the year 1995-96 and that company also deposited interest free security deposit of Rs. 10 lacs and both are treated equally. The case of the petitioner does not fall within the ambit of the resolution passed at the Annual General Meeting held on 27.9.97 and is barred by delay, laches and also by acquiescence and also barred by law of limitation. Thus, the decision of the respondent is preferctly justified and therefore, the petition of the petitioner deserves to be dismissed.

4. In the rejoinder affidavit filed by the petitioner, it is stated that the respondent has not meted out equal treatment in identical case like that of the petitioner. The SEBI has not objected to the corporate membership of the similarly situated individual members regarding corporate membership. Impliedly, SEBI has approved the action of the respondent. It is also stated that there is no difference between petitioner's case and that of 35 memebrs whose case was converted into corporate memebrship without demanding or collecting of additional security deposit. The case of Jogindar Capital Services Ltd. was misconceived. Mr. Anil Muttha, the proprietor of that firm was the individual member and his equity was diluted below 51% on conversion to corporate membership and he was compelld to pay conversion deposit of Rs. 10 lacs, while the petitioner had retained 51% share in the corporate memebrship. Hence, no question arises for demanding and collecting the deposit.

5. By sur-rejoinder, the respondent has stated that the governing board of the respondent is empowered under Article 19 of the Article of Association, to fix up the said amount as security deposit to be paid by its member. Even the SEBI has not objected to the respondent having taken Rs. 10 lacs as security deposit

from the petitioner in 1996 as per the rules and policy prevalent at the relevant time which will clerly indicate that there is an implied approval of the said collection of Rs. 10 lacs as security deposit by the respondent and even by SEBI also.

6. The contention of the learned counsel for the petitioner is that the deposit of the petitioner was subject to the clearance and guidelines approved and conveyed by SEBI and the resolution dated 27th September, 1997 of the Vadodara Stock Exchange provides that any existing individual membership converting its memebrship into corporate entity and admitted as corporate member, shall not be required to pay any nomination fees/admission fees. He will be required to pay only subscription if he converts its individual membership into a corporate membership by 31st December, 1997 or such other extended time would not be required to pay the security deposit. As the petitioner's deposit was subject to the norms and conditions, subsequently, by the resolution dated 27th Septmber, 1997 it has been made clear that any person can convert his individual membership into corporate membership and he would not be insisted to make security deposit. Even the registration fees was also exempted for this purpose. After this resolution of 27th September, 1997 it will be deemed that the petitioner's conversion into corporate membership made under the terms and conditions specified in the resolution dated 27th September, 1997. As at the relevant time, when the petitioner applied for conversion of its membership into corporate membership, there were no guidelines or clearance and those guidelines and clearance have been made by the resolution dated 27th September, 1997. As such, the petitioner would be entitled for the benefit of this resolution as the deposit of the petitioner was subject to the terms and conditions to be imposed by the respondent Exchange or by SEBI. As this resolution passed by the respondent has been approved by SEBI, under Government policy, the petitioner would fall under that policy and it would be entitled for refund of the security deposit paid by it.

7. On the contrary, the contention of the learned counsel for the respondent is that the petitioner had already been admitted and converted into a corporate membership from 1995 and its case does not fall within the guidelines or clearances made by the resolution dated 27th September, 1997. The petitioner was permitted to be converted into corporate membership under existing policy. The new policy was made by the respondent on the pronouncement of the Budget of 1997 made by the Central

Government in the year 1997 for the encouragement of individual memebrship to act as corporate membership. As such, the case does not fall under the policy of the resolution dated 27th September, 1997 and the case of the petitioner is totally different from the case of 35 members who was admitted to corporate membership without insisting to make security deposit of Rs. 10 lacs. The learned counsel for the respondent Exchange candidly admitted and made it clear before this court that if SEBI has no objection to refund the amount of the petitioner, the respondent Exchange is ready to refund the same. As the SEBI has not made any clearance on this point and so they are unable to refund the amount of Rs.10 lacs to the petitioner.

8. I have carefully considered the contentions raised by the learned advocates for the rival parties and perused the relevant papers on record. The petitioner intended to convert its individual membership into corporate membership by its letter dated 10.10.1995 as at the relevant time there were no guidelines or clearance on this point either by the respondent Exchange or by SEBI. The petitioner stated in its letter that they are ready to deposit Rs.10 lacs as security deposit with the respondent in parity with the corporate card till SEBI clears the matter regarding the guidelines and rules and regulations. The petitioner had undertaken to abide by the standard of security deposit as specified by SEBI. If more deposit is required by SEBI and if it is excessive, then the petitioner would require refund. By the letter dated 22nd September, 1995, the respondent forwarded the matter of the petitioner for registration as corporate membership with permanent deposit of Rs. 10 lacs as and when guidelines for conversion of individual membership into corporate membership are cleared by SEBI, the respondent will refund additional deposit of Rs. 5 lacs. In case SEBI considers to remove this discrepancy between two membership status and suggestion, collection of Rs. 10 lacs as permanent deposit, then the amount of Rs. 10 lacs will be withheld. Thus, the petitioner's proposal was made susbject to the approval of SEBI regarding the security deposit made by the petitioner. By a letter dated 24th November, 1995 the respondent Exchange required for cash deposit of Rs.10 lacs from the petitioner immediately. The guidelines for conversion of individual membership into corporate membership were to be approved by the SEBI and that conversion would be subject to the terms and conditions as may be decided by SEBI. The petitioner vide its letter dated 13th December, 1995 deposited the amount with the respondent subject to final norms for conversion are conveyed by

SEBI and final decision of SEBI would be binding and the excess amount, if any, would be refunded to the petitioner. It is not in dispute that the SEBI has not made any clearance regarding guidelines for the purpose of conversion into corporate membership. Pursuant to the announcement made by the Central Government in 1997 for the encouragement of individual member into corporate member, the general meeting of the members of the respondent Exchange held on 27th September, 1997 "Resolved that pursuant to section 31 and other applicable provisions, if any, of the Companies Act, 1956; the following paragraph be added in existing Article no.45 of the Articles of Association of the Exchange subject to the approval of the Security and Exchange Board of India. " Notwithstanding any earlier acts/deeds and terms and conditions in the matter of existing corporate membership, in case an existing individual member converts his membership into corporate entity and admitted as a corporate member, wherein the outgoing member himself holds together with his family members and current partners more than 51% of the share capital, he shall not be required to pay any nomination fees/admission fees but shall be required to pay annual subscription, security deposit, base minimum capital and other fees as charged to an individual member, if he converts his individual membership into a corporate membership by 31st December, 1997 or such other extended time as may be prescribed by the Government of India." In this regard, the contention of the learned counsel for the respondent is that the petitioner's case does not fall within this resolution as the petitioner had already admitted as corporate membership under the policy in existence at the relevant time. This policy by a resolution dated 27th September, 1997 was made applicable only to those persons who were individual members and they want to be converted into corporate members, then they were not required to deposit such security deposit of Rs. 10 lacs. As the petitioner had already been admitted to corporate membership in 1995-96, the petitioner's case does not fall within the case of this resolution. Pursuant to that resolution, 35 individual members were converted into corporate membership. On the contrary, the contention of the learned counsel for the petitioners is that as the conversion of the membership of the petitioner was subject to the guidelines to be approved by the SEBI, SEBI has not made or approved any guidelines or terms and conditions, but those conditions have been made clear by the respondent vide its resolution dated 27th September, 1997. If any existing individual member applies for conversion into corporate membership, he was not required to deposit the interest

free deposit of Rs. 10 lacs. As the deposit of the petitioner was subject to norms and conditions, if no norms and conditions have been made available from SEBI, those terms and conditions have been made clear by the respondent itself vide its resolution dated 27th September, 1997, the petitioner's would fall within the meaning of that resolution and the petitioner would not be required to deposit that amount and if that amount has already been deposited was subject to the decision and that decision has been taken. Hence, that amount is required to be refunded to the petitioner. I find great force in this contention of the learned counsel for the petitioners in view of the fact that interest free security deposit was subject to norms and terms and conditions to be made clear or imposed by SEBI and at the relevant time, there were no norms or terms and conditions regarding security deposit amount of Rs. 10 lacs to be made by individual memebr for conversion into corporate memebrship. As such, the petitioner paid such deposit susbject to the norms and terms and conditions to be made clear and conveyed by the SEBI and the respondent Stock Exchange also informed the petitioner that the guidelines for converting the individual membership into corporate membership were to be subject to such terms and conditions as may be decided by SEBI vide letter dated 24th November, 1995. At the relevant time, there were no norms or guidelines even prescribed by the respondent for conversion of individual membership into corporate membership and there were no such norms or guidelines by the SEBI for this purpose. The respondent Exchange required the immediate deposit of security deposit of Rs.10 lacs and hence that amount was deposited accordingly by the petitioners with letter dated 13th December, 1995 and that was subject to the final norms and guidelines for conversion of individual members to corporate membrship which were to be conveyed by SEBI. It is only stated by the learned counsel for the respondent that the powers were exercised under Article 19 of the Article of Association regarding security deposit, but at the same time, it is also admitted by the learned counsel for the respondent that there were no exact norms or guidelines regarding security deposit of Rs.10 lacs at the relevant time though different proposal was made to SEBI by the respondent that the amount of Rs.10 lacs would be required to be deposited as security deposit by a person to be admitted as corporate member directly. If any person converts from individual memebrship into corporate membership, he would be required to deposit only Rs. 5 lacs. In order to maintain parity, the petitioner was required to deposit Rs.10 lacs not under any policy, norms or guidelines of

the respondent and it was made clear that if SEBI requires Rs.10 lacs as security deposit, then the Stock Exchange will withhold such amount, and if it is found in excessive, the amount will be refunded as per the instructions of the SEBI. For the first time on 27th September, 1997, it is made clear by the respondent Exchange that any person who is an individual member can apply for conversion and he will be permitted to be converted as corporate member without insisting for the security deposit of Rs.10 lacs. As the matter of the petitioner regarding security deposit was still pending and had not been finalised by the SEBI and no norms, policy or guidelines were made by the respondent and no guidelines or norms were made clear by the SEBI, the petitioner would be entitled for the benefit of the resolution dated 27th September, 1997 as the petitioner's deposit was subject to the norms, guidelines and terms and conditions to be made clear by SEBI and no guidelines, norms and terms and conditions have been made clear by SEBI and the respondent itself made clear for the first time by a resolution dated 27th September, 1997 and norms of Resolution dated 27.9.97 have been approved by the SEBI. As such, the petitioner's deposit remained continued subject to the guidelines and when the guidelines came in force by the resolution dated 27th September, 1997. The learned counsel for the respondent has fairly admitted that the respondent Exchange has no objection to return or refund the amount of Rs.10 lacs to the petitioner, but they have not received any instructions from SEBI. If the respondent has no objection to refund the amount and as per the resolution dated 27th September, 1997, no security deposit is required to be given by the petitioner. The petitioner's deposit will be subject to the norms made available by a resolution dated 27th September, 1997. The decision of the respondent communicated by letter dated 19.12.2000 is discriminatory, illegal and not sustainable in the eye of law. As such, the petitioner would be entitled for the refund of that amount.

9. Now, the next question to be decided is as to whether the petitioner is entitled for the interest or not and if yes, at what rate on the deposit of Rs.10 lacs. It is stated that the amount of security deposit was in the form of a permanent interest free deposit, but that was subject to the decision of the SEBI and the SEBI is not deciding anything. While, the respondent Exchange has decided norms on 27th September, 1997. The decision of the respondent communicated by the letter dated 19.12.2000 is discriminatory, illegal and not sustainable in the eye of law. Therefore, the petitioner would be

entitled for the refund of the entire amount of security deposit with interest from 27th September, 1997. The petitioner has claimed interest at the rate of 18% per annum, but I think, rate of 18% per annum is much higher in the present state of economic affairs. Therefore, in my view, interest at the rate of 12% would be an appropriate rate of interest and the petitioner is entitled to interest at the rate of 12% per annum on the deposit of Rs.10 lacs from 27th September, 1997.

10. In view of the above discussion, this petition deserves to be allowed. Accordingly, the petition is allowed and the decision of the respondent communicated by letter dated 19.12.2000 is hereby quashed. The respondent Vadodara Stock Exchange is hereby directed to refund the amount of Rs.10 lacs to the petitioner alongwith interest at the rate of 12% per annum from 27th September, 1997 till the date of payment. This direction will be complied within a period of 3 weeks from the date of presentation of the certified copy of this judgment. Rule is made absolute to the above extent with no order as to costs.

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